



# **City of Nashua, NH Stormwater Utility Feasibility Study**

**A Final Grant Report to  
The New Hampshire Department of Environmental Services**

Submitted by

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Division of Public Works, Engineering Department  
9 Riverside Street  
Nashua, NH 03062

December 2011

Funding for this project was provided in part by a Watershed Assistance Grant  
from the NH Department of Environmental Services with Clean Water Act  
Section 319 funds from the U.S. Environmental Protection Agency.





# **City of Nashua, NH**

## **Stormwater Utility Feasibility Study**

### **Final Grant Report**

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## **1. General Project Information**

### **1.a Identification of key players and participants**

In order for the City of Nashua to apply for this grant, an internal Preapplication Grant Review form must be approved. Mayor Donnalee Lozeau and Interim Public Works Director David Fredette approved of the grant application. The grant application was completed by Stephen Dookran, City Engineer; Amy Prouty Gill, CSO Stormwater Engineer, and Kathie Carragan, Contract Administrator. The Request for Solicitation was approved by the Mayor and the Director of Public Works.

An RFQ was advertised on December 28, 2009. Five firms submitted proposals on January 21, 2010:

- Comprehensive Environmental, Inc. (CEI) of Merrimack, NH
- Hazen and Sawyer of Boston MA
- Hoyle Tanner and Associates Inc. of Manchester, NH, in association with Normandeau Associates
- Municipal & Financial Services Group of Annapolis, MD, in association with Woodard & Curran of Portland, ME
- Vanasse Hangen Brustlin, Inc. (VHB) of Bedford NH, in association with Hayner/Swanson Inc.

After evaluating the proposals, Comprehensive Environmental, Inc. (CEI) was selected as the most qualified to complete the feasibility study. Eileen Pannetier, President and Rebecca Balke, Project Manager were on the project. The contract for CEI was recommended to be approved by the Board of Public Works consisting of Mayor Donnalee Lozeau, Chair; and Commissioners Tracy Pappas, Vice-Chair; Donald Dyer; Tim Lavoie; and Dan Gagnon. The contract was approved by the Finance Committee consisting of the Mayor, and Aldermen David Deane, Ben Clemons, Barbara Pressly, Kathy Vitale, Arthur Craffey, and Paul Chasse.

A Workshop Group was developed to provide stakeholders the opportunity to contribute to the study. Workshop members from the City included:

Lisa Fauteux, Director, Public Works Division  
Kathy Hersh, Director, Community Development Division  
Steve Dookran, P.E., DPW City Engineer  
Dorothy Clark, Esq. Deputy Corporation Counsel  
Amy Prouty Gill, DPW Stormwater Engineer  
Mario Leclerc, DPW Superintendent Wastewater  
Carolyn O'Connor, DPW Finance and Administration Manager

While three private citizens were invited to participate, only one private citizen, Michael Gallagher, attended the workshops to bring residential and commercial opinions to the discussion. Eric Williams, Barbara McMillan, and Jillian McCarthy of NHDES also participated in the workshops.

#### **b. Final budget breakdown and match sources**

The total contract with CEI was for \$43,910.00. The deliverable for Task 11 was a presentation of the Feasibility Study Report and recommended options to the Board of Public Works and the Board of Aldermen. This deliverable, valued at \$1,260.00, will not be completed before the closure of the grant period. Therefore, the total paid to the consultant, CEI, is \$42,650.00. The grant amount is for \$27,500. This would require a City match of \$18,343. The City expended \$15,150 as a cash match in payment to the consultant CEI. The additional cash match, \$3,193, is requested to be from the flyover that resulted in an impervious layer to the GIS maps.

During the course of the feasibility study, the City authorized a contract to perform a spring 2010 aerial photography flight to update the City's GIS mapping system. Using the new orthoimagery and color infrared red technology, an impervious surface layer for the GIS mapping was created, at a cost of \$16,992. As a part of this contract, the amount of impervious area within every parcel was calculated and used in determining the ERU. Also, a list of parcels with the largest amount of impervious surface was generated and used to understand what the maximum fees would be to the larger commercial properties. For this reason, the City has requested to use these dollars for the remaining matching funds of \$ 3,193.

#### **1-b-i. Explanation of costs that were either over- or under-estimated**

The project was completed on budget. All tasks were completed in whole, except the deliverable for Task 11. The deliverable for Task 11 was a presentation of the Feasibility Study Report and recommended options to the Board of Public Works and the Board of Aldermen. At this time the City has determined it is premature to present this study in a public forum, however this presentation could occur at a time beyond the closure of the grant period. Materials have already been prepared by the consultant for this presentation. A more appropriate time for the presentation may be when the new MS4 Permit is instituted. Eight hours of consultant time have been deleted from the task which would account for the updating of the presentation and the actual presentation. The City is not requesting reimbursement for that work.

#### **1-b-ii. Final project outcome**

The stormwater fee feasibility study found that a stormwater fee is a practical and advantageous option for Nashua that would provide 1) a stormwater fee that fairly distributes the cost of stormwater management activities (e.g., drainage infrastructure

maintenance and improvements) amongst property owners, with properties that produce greater volumes of runoff (e.g., commercial and industrial properties with large impervious areas) paying more than residential property owners; 2) a stable source of funds that are dedicated to fulfilling mandated requirements for stormwater management and allow the City to pro-actively maintain its drainage infrastructure and 3) improvements to infrastructure and maintenance programs that would provide additional benefits such as better flood control, better roads, better fishing, better boating and better water quality for recreation and drinking.

The average residential fee in Nashua to meet regulatory requirements and provide long-term maintenance and improvements would be approximately \$75 per household per year. The average commercial property would pay about \$820 per year, with actual fees based on the total amount of impervious surface. However, it is recommended that a credit system be established for properties that install stormwater best management practices on their sites to reduce their stormwater fee. Actual fees will need to be refined when finalizing the stormwater fee.

As stated earlier, the City has determined it is premature to try to seek approval for a Stormwater Utility at this time and will wait until the updated MS4 permit is mandated and puts more stringent requirements on the City.

## **2. Lessons Learned**

Analysis of the Scope of Work completed under the grant agreement follows.

### **Task 1. Request for Qualifications**

Through the public advertising process, five highly qualified firms responded to the RFQ. The five firms ranged from large corporations with New England offices to small local firms. The City interviewed three of the firms. By discussing the approach of completing the study and their past experiences with other municipalities, the City was able to build a comprehensive scope of work. By selecting CEI, the City was working with a local firm with past experience in stormwater utility processes.

### **Task 2. Stormwater Utility Development Workshops**

A review of nationwide attempts to institutes a stormwater utility reveals that the public component is the most important step for a community to establish a stormwater utility. The City attempted to bring together City employees familiar with the needs for stormwater management. This included members of the planning department, financial division, legal department and the public works division. Three citizens were invited to participate in the workshop but only one was able to actually attend the meetings. While attempts were made to get citizens involved, the results were disappointing.

Three meetings were held. The components of a stormwater drainage system and the needs required to operate and maintain the system was explained. It was determined that getting beyond the concept that a utility would represent more government and more taxes or fees would required a large scale public information campaign for the general public to understand why a stormwater fee is needed. The development of the Stormwater Fee Public Outreach Plan that resulted from the workshop is a part of the final feasibility study report.

**Task 3. Stormwater Program Analysis and Planning.** This was a large task since existing expenditures in a variety of departments (Wastewater, Street, Engineering, Solid Waste, Parks, Planning, Assessing, and Code Enforcement) are related to stormwater funding. It was difficult to determine costs expended annually because responsibilities for tasks related to stormwater management are spread out among department and usually not accounted for an item related to drainage. In many cases, percentages of employee salaries or equipment costs were divided based on estimated percentages.

**Task 4. Compelling Case.** Drainage issues throughout the city have been documented for many, many years and costs of making improvements to the drainage system were available. Capital improvement projects such as increasing the size of culverts in waterways that repeatedly are not funded have been documented. The federal NPDES Phase II General Permit which the city must adhere to is an unfunded mandate to implement its stormwater manage program. With the upcoming updated MS4 permit, more numerous and stringent requirements are expected which will come with a cost. In order to complete rehabilitation or improvements to the aging drainage system (which includes catch basins, pipe network, culverts, treatment units, cleaning of waterways, detention pond maintenance) or expansion of the current system to solve drainage problems and address the federal requirement, providing a compelling case for a utility was straightforward.

**Task 5. Education & Outreach Strategies.** Education and outreach strategies were generated and discussed with the workshop group. The idea of targeting specific groups and how improved stormwater quality would be advantageous for them was discussed. One point made during the discussion was that the term “utility” may not be public friendly and that addressing the study as a funding mechanism or fee would be more appropriate.

**Task 6. Data Compilation for Rate Methodology.** The City does have a Geographic Information System (GIS) database that provided much of the data used in review of the rate methodology.

During the period the feasibility study grant application was being prepared, the City was going through the process updating the GIS mapping with a new orthoimagery. By including a color infrared red technology in that project, an impervious layer to the GIS mapping system was developed so that the amount of

impervious area on every parcel in the city could be calculated. This component was very helpful in gaining “real” representation of what properties would pay under the various rate structures proposed. During this process the top 25 parcels with the most impervious area were identified, noting that many were municipally owned properties. Large commercial owners were identified and could be contacted in advance of a fee being instituted. This impervious layer also can be used when redevelopment occurs on grandfathered properties to try to encourage low impact development on sites to reduce the amount of runoff generated by properties that have 95 % of their parcel as impervious areas.

**Task 7. Rate Structure Analysis.** The workshop group main concern was allowing commercial users with expanses of pavement to have the ability to gain credits in order to reduce their proposed fee. This led to a good discussion of low impact development and the need to encourage this practice in such an urban environment. For this task, the newly generated information on impervious coverage was extremely helpful.

**Task 8. Billing Methodology.** The ideas of a separate billing, incorporating the fee with the sewer bill, or as part of the tax bill were discussed. Approximately 10 percent of the City is not on the public sewer system so a separate billing would be required. Since use of impervious public roads is citywide, consideration of adding it as part of the vehicle registration was mentioned, but was later eliminated. Using the sewer bill, which is processed quarterly, would allow a breakdown of the stormwater fee into four payments per year.

**Task 9. Recommendations.** Recommendations are explained in 1-b-ii above and in Section 3 Next Steps below.

**Task 10. Final Feasibility Study Report.** The study was organized so that the tasks and their outcomes could be recognizable within the study.

**Task 11. Presentation and Final Recommendations.** The presentation for the purposing of presenting the study to the Board of Public Works and the Board of Aldermen was generated. However, the presentation and final recommendations have not yet been presented to the elected boards. At this time the City has determined it is premature to present this study in a public forum, however this presentation could occur at a time beyond the closure of the grant period, especially if the updated MS4 Phase II permit is mandated.

**Task 12. Final Grant Report.** This report was completed as required by the grant agreement.

The lessons learned are summarized below:

- A significant constraint to implementing a stormwater fee is anticipated to be the public's lack of understanding of the importance of maintaining the City's infrastructure and stormwater quality and how this will benefit them
- It is difficult to initiate the need for a new fee for any purpose when the economic times are difficult
- An elected official and/or influential citizen is needed to champion the cause in order to gain support

### **3. Next Steps**

A request for funding for the Implementation and Analysis phase of forming a stormwater utility was made to the Capital Improvements Committee and is being reviewed for funding during the FY13 fiscal year. Since the FY10 funding cycle, requests to fund the stormwater feasibility study and implementation phase began; however, it has yet to be selected as a project through the capital improvement process.

The most significant constraint to implementing a stormwater fee is anticipated to be the public's lack of understanding of the importance of maintaining the City's infrastructure and stormwater quality and how this will benefit them. In order to overcome this constraint, the City will continue to take steps to educate the public concerning stormwater issues and the need for stormwater management. The city will continue to use the "Paulie the Pickerel" logo and make public presentations using the Enviroscope watershed display model in hopes of bringing awareness to the needs and costs associated with stormwater. Also, the Public Outreach Plan developed during the study will be reviewed and implemented as deemed appropriate as a first step in an overall fee implementation strategy.

At this time the City has determined it is premature to present this study in a public forum, however this presentation could occur at a time beyond the closure of the grant period. Due to economic conditions the city, state and country are experiencing, it was determined to be burden on the public to suggest an additional fee be initiated at this time. Without the additional requirements of the federal mandate of the updated MS4 permit, the city will continue to fund its stormwater management program in the manner it has been doing through its current budgeting mechanism.

### **4. Grant Agreement Deliverables**

Attached to this report is the RFQ and contract with consultant. The feasibility study was sent to NHDES under separate cover. Within the Feasibility Study, Appendix E includes materials associated with the workshops including all agendas, presentations, and meeting minutes. Appendix F of the study includes the Public Outreach Plan.



# Task 1.

Request for Qualifications for  
Professional Services  
Stormwater Utility Feasibility Study  
December 2009

And

Contract between the City of Nashua and  
Comprehensive Environmental, Inc.  
Stormwater Feasibility Study  
March 10, 2010

**December 2009**

## **REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES**

### **Stormwater Utility Feasibility Study**

The City of Nashua Division of Public Works is inviting you to submit a Statement of Qualifications and Fee Proposal for Professional Services in order to complete a Stormwater Utility Feasibility Study. Grant funding will be used to support costs associated with conducting a Stormwater Utility Feasibility Study. The feasibility study should build on and clarify the findings of the information provided in 2009 Nashua's Municipal Stormwater Utility Feasibility Studies grant application. The feasibility study should take a group of staff, elected officials, and citizens through all the key aspects of utility development without committing to utility development. The feasibility study should also identify and outline in detail the tasks that need to be completed for Stormwater Utility Implementation in Nashua. It is expected that the consultant will work collaboratively with the municipal staff, elected officials, utility stakeholders and partners, and interested citizens to complete the tasks outlined in this Scope of Services.

#### **I. Background**

The City of Nashua is the second largest city in New Hampshire with a population of approximate 87,100 and with 30.8 square miles of land and 1.0 square mile of inland water. The City of Nashua is approximately halfway through a twelve year, \$80 million dollar Combined Sewer Overflow (CSO) Program to reduce and mitigate discharges at the city's eight CSO locations located on the Nashua and Merrimack Rivers. Approximately one quarter of the city is served by combined sewers. The remaining 75 percent of the city is served by a separated collection system. The City of Nashua owns and operates at least 483 outfalls, 35 detention ponds, 75 culverts, 148 miles of storm drain and 75 miles of stream and river banks.

The City is required to have permitted stormwater outfalls under the EPA NPDES Municipal Separate Storm Sewer Systems (MS4s) Stormwater Phase II rule. This unfunded mandate requires the City to address pollutant removal from stormwater to improve the water quality in the brooks, streams, pond and rivers to which the city's drainage system discharges, address control measures related to public education and participation, illicit discharge detection and elimination, construction and post-construction runoff control, and pollution prevention for municipal operations

In addition, the separate drainage collection system needs capacity and functional improvements and has maintenance and repairs associated with it. The sewer user fee which funds items related to the CSO Program and issues with the wastewater collections system is not targeted at stormwater. The City recognizes the need to be proactive in correcting, replacing and maintaining its aging infrastructure; however, it lacks current funding to address the needs of the drainage system.

## **II. Services Required**

The City is looking to hire a consultant to perform services to complete the following tasks associated with completing a Stormwater Utility Feasibility Study.

### **Task A. Stormwater Utility Development Workshops**

**Task Description:** Develop workshop agendas and hold a start-up workshop, a progress discussion workshop, and a final workshop to present options. Attendees should include municipal staff, elected officials, and invited citizens and partners. The workshops should provide an overview of current stormwater funding mechanisms and steps for setting up a stormwater utility, discussion of existing stormwater program; problems, needs, and goals, costs, revenues, an outlining plan for next steps, as well as brainstorming of advantages and disadvantages of adopting a stormwater utility.

**Deliverables:** Workshop agendas, workshop promotional materials, handouts, and workshop summary report (recording discussion and plan for next steps).

### **Task B. Stormwater Program Analysis and Planning**

**Task Description:** Analyze the current stormwater program and develop a stormwater program plan under a proposed stormwater utility. The plan should include:

1. A description of the current municipal stormwater program:
  - a. The municipal departments and staff involved in managing and implementing the stormwater program and their roles, duties, and responsibilities.
  - b. The current stormwater activities implemented under the existing municipal stormwater program.
  - c. Identification of the problems, needs, issues, and goals of the existing municipal stormwater program.
2. A description of the future, municipal stormwater program managed under a stormwater utility:
  - a. The program priorities and basic objectives including how the stormwater program is to interact with other city programs.
  - b. Evaluate and recommend operation/division/structural changes necessary to manage stormwater requirements within utility framework.
  - c. Budget and revenue requirements including program capital and operation and maintenance needs and costs.
  - d. Cost of service analysis
  - e. The process for obtaining local approval and inter-local agreements (if applicable) for establishing a municipal stormwater utility.
  - f. Identification of the legal entity and staffing for the stormwater utility and the associated process for establishment.
  - g. The next steps for Nashua's stormwater utility implementation plan.

**Deliverables:** Documentation of stormwater program analysis.

**Task C. Compelling Case**

**Task Description:** Building on workshop input, identify advantages and disadvantages of adopting a stormwater utility for purposes of needs identified in the stormwater program analysis.

**Deliverables:** Compelling case analysis and recommendations for Nashua.

**Task D. Education & Outreach Strategies**

**Task Description:** Identify outreach strategies addressing barriers to utility implementation, Identify target audiences, and design an outreach plan with messages and methods to get past barriers and achieve program buy-in. Also reference information included in “compelling case recommendations.”

**Deliverables:** Stormwater utility implementation outreach plan for stormwater utility support and up front outreach incorporated into process.

**Task E. Data Compilation for Rate Methodology**

**Task Description:** Identify and assess existing data, data sources, data gaps and potential sources to fill the gaps, for the purpose of laying out a path and estimating costs to support master account file database development. Data should include:

- Parcel Identification
- Land Use
- Existing Utility Database Accounts
- Parcel Ownership Database Accounts
- Parcel Ownership & Address
- Impervious Surface Coverage

**Deliverables:** A summary of identified data sources, identified data gaps and potential sources to fill the gaps, as well as an analysis of the effort required to compile the data.

**Task F. Rate Structure Analysis**

**Task Description:** Provide a cost/revenue analysis utilizing a range of proposed, potential utility rates, and identify realistic potential rate methodologies, including:

- Impervious Area
- Impervious Area + Gross Area
- Gross Area/Intensity of Development/Land Use
- Base Fee & Impervious Area Rate
- Credit Allowances
- Others

**Deliverables:** Rate and Rate Methodology recommendations.

**Task G. Billing Methodology**

**Task Description:** Working with municipal billing and related planning staff, review and recommend a billing methodology.

1. Investigate the following billing system options:
  - Existing Public Utility Bill
  - Tax Bill
  - Stand Alone Bill
2. Address the following issues related to billing:
  - Billing frequency
  - Billing database source
  - Billing recipient (e.g., the owner or the tenant)
  - Long term database management
  - Procedure for handling delinquencies
  - Appeals process

**Deliverables:** Billing summary and methodology recommendations.

#### **Task H. Recommendations**

**Task Description:** Evaluate the impact of the new stormwater program on existing staff and recommend operation/division/structural changes necessary to manage stormwater requirements within utility framework.

#### **Task I. Final Feasibility Study Report**

**Task Description:** Prepare final draft Feasibility Study Report and plan for city and DES review. Incorporate changes.

**Tasks H & I Deliverables:** Submittal of final Feasibility Study Report and plan for the municipality.

#### **Task J. Presentation and Final Recommendations**

**Task Description:** Present final Feasibility Study Report and recommended options to Board of Public Works and Board Aldermen.

**Deliverable:** Presentation of Feasibility Study Report and recommended options to Board of Public Works and Board of Aldermen.

#### **NOTE: Outreach Materials Provision**

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo, and the following citation: "Funding for this project was provided in part by a Watershed Assistance Grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency".

The following documents are available at the city for review:

- City of Nashua, NH NPDES Phase II Small MS4 Annual Reports years 2003 through 2009. All reports are available on the EPA Region 1 web site or directly at <http://www.epa.gov/region01/npdes/stormwater/2003-permit-archives.html> under the State of New Hampshire listings.

- GIS Drainage map of City available at the City web site <http://www.nashuanh.gov/> or directly at <http://www.nashuanh.gov/CityGovernment/Departments/Assessing/GISGeographicalBasedMaps/tabid/445/Default.aspx>
- 2009 Nashua's Municipal Stormwater Utility Feasibility Studies grant application

### III. Submission Requirements

- A. **Pre-Submission Conference- A mandatory meeting** to discuss the project before the submission is scheduled for **Wednesday, January 13, 2010 at 9:00 a.m.** in the DPW Conference Room, 9 Riverside Street, Nashua NH 03062. You or your representative(s) are required to attend this meeting if you intend to submit a Statement of Qualifications.
- B. Narrative - Include understanding of the study and the general approach to successfully completing each task. Submit a Statement of Qualifications that identifies specific staff to be assigned to this project. Identify subconsultant that are proposed. Staff and subconsultants listed cannot be replaced without advanced written approval of the Division of Public Works.
- C. References - Provide three or more references that are knowledgeable about the proposer's experience on related specific projects.
- D. Copies - Submit **six (6) sets** of the narrative in sealed envelopes clearly marked **"Stormwater Utility Feasibility Study – Narrative"** no later than **Thursday, January 21, 2010 at 11:00 am** to :

Central Purchasing  
City of Nashua  
229 Main Street  
Nashua, NH 03060

- E. Fee Schedule - Also submit to the same address (Central Purchasing) and for the same deadline **one copy** of the Fee Schedule in a separate sealed envelope clearly marked **"Stormwater Utility Feasibility Study - Fee Schedule"**. The fee schedule shall detail tasks, man-hour breakdowns for each task, billing rates for staff, direct expenses, overhead and profit, and subcontractor markups (if any). **The fees associated with the Scope of Services by task shall be totaled on the form provided in Section V and included in a sealed envelope.**

### IV. Selection

Respondents may be invited to interviews. If selected for an interview, the respondent will be notified within a reasonable time following the RFQ submittal. The fee schedule for the consultants selected for

Completion of the project will be no later than six months from the Notice to Proceed.

Please contact Amy Gill, Stormwater Engineer at (603) 589-3140 with any questions regarding this Request for Qualifications.

**V. Fee Schedule Form**

This form, which shall be placed in a separate sealed envelope, shall be filled in by the qualified applicant. Prices shall be written in both words and numerals and the extensions made by him/her. In case of discrepancy between words and numerals, the **amount shown in words shall govern.**

**Proposed Fee Schedule**

Project involving City of Nashua’s **“Stormwater Utility Feasibility Study”**, in accordance with the Scope of Services, the following:

Task No.	Item	Fee in Words	Total Fee, Numbers
A	Stormwater Utility Development Workshops		
B	Stormwater Program Analysis and Planning		
C	Compelling Case		
D	Education & Outreach Strategies		
E	Data Compilation for Rate Methodology		
F	Rate Structure Analysis		
G	Billing Methodology		
H	Recommendations		
I	Final Feasibility Study Report		
J	Presentation and Final Recommendations		
TOTAL			

Submitted by:.....  
(Name of Firm)

Signature: ... ..

Print Name:.....

Title: .....

Contact Information: .....  
Phone email

Date: .....



A CONTRACT BETWEEN THE CITY OF NASHUA

AND

COMPREHENSIVE ENVIRONMENTAL INC

---

NAME AND TITLE OF INDEPENDENT CONTRACTOR

---

21 DEPOT STREET, MERRIMACK, NH 03054

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ADDRESS OF INDEPENDENT CONTRACTOR

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of independent contractors; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Contractor represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

**1. DOCUMENTS INCORPORATED.** The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A--General Conditions for Contracts  
Exhibit B--Scope of Services.  
Exhibit C--Contract Time.  
Exhibit --Fee Schedule

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

**2. WORK TO BE PERFORMED.** Except as otherwise provided in this contract, Contractor shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described in Exhibit B.

**3. PERIOD OF PERFORMANCE.** Contractor shall perform and complete all work within the time periods set forth in Exhibit C. The time periods set forth in Exhibit C may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Contractor shall begin performance upon receipt of a Notice to Proceed and a valid purchase order from the City.

**4. COMPENSATION.** Contractor agrees to perform the work for a total cost not to exceed \$43,910, which, unless otherwise provided in this contract, shall be paid in accordance with the

provisions of Exhibit D. Unless otherwise provided in Exhibit D or unless Contractor has received a written exemption from the City, Contractor shall submit monthly requests for payment for services performed under this agreement. Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Contractor agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.

2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City will pay for work satisfactorily completed by Contractor. The City will pay Contractor within 30 days of approval by the City of the submitted invoice forms and progress reports. The City will make no payments until the invoice forms and progress reports have been submitted and approved. The parties expressly agree that progress payments shall not exceed the amounts for any particular task or phase of work set forth in Exhibit C and may be made in accordance with General Condition paragraph 14.

**5. EFFECTIVE DATE OF CONTRACT.** This contract shall not become effective until and unless approved by the City of Nashua.

**6. NOTICES.** All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

**CITY REPRESENTATIVE:**

Amy Prouty Gill, CSO Stormwater Engineer  
DPW, Engineering Dept.  
9 Riverside Street  
Nashua, NH 03062

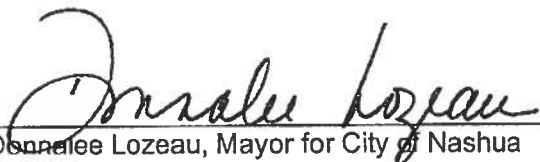
**CONTRACTOR REPRESENTATIVE:**

Richard C. Cote, P.E.  
Comprehensive Environmental Inc  
21 Depot Street  
Merrimack, NH 03054

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City or Contractor may change the address or representative by giving written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

  
Richard C. Cote, P.E. for Comprehensive Environmental Inc. 2/25/10  
(date)

  
Donatelle Lozeau, Mayor for City of Nashua 3/2/10  
(date)



## **CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTORS**

### **EXHIBIT A TABLE OF CONTENTS GENERAL CONDITIONS**

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<b>20. CITY INSPECTION OF CONTRACT MATERIALS</b>	<b>GC--10</b>
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## **GENERAL CONDITIONS**

**1. DEFINITIONS.** Unless otherwise required by the context, "Contractor" includes any of the Contractor's consultants, subconsultants, contractors, and subcontractors

**2. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE.** The parties agree that Contractor shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City and Contractor, and nothing in this contract shall create any contractual relationship between the City and Contractor's consultants, subconsultants, contractors, or subcontractors. The parties also agree that Contractor is not a City employee and that there shall be no:

- (1) Withholding of income taxes by the City;
- (2) Industrial insurance coverage provided by the City;
- (3) Participation in group insurance plans which may be available to employees of the City;
- (4) Participation or contributions by either the independent contractor or the City to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the City;
- (6) Unemployment compensation coverage provided by the City.

Contractor agrees, if applicable and before commencing any work under the contract, to complete and to provide the following written request to its insurer:

**Comprehensive Environmental Inc.** has entered into a contract with the City of Nashua to perform work from \_\_\_\_\_ to \_\_\_\_\_ and requests that the Insurer provide to the City of Nashua 1) a certificate of coverage, and 2) notice of any lapse in coverage or nonpayment of coverage that the Contractor is required to maintain. The certificate and notice should be mailed to:

Risk Management  
City of Nashua  
229 Main Street  
Nashua, NH 03060

Contractor agrees, if not exempt, to maintain required workers' compensation coverage throughout the entire term of the contract. If Contractor does not maintain coverage throughout the entire term of the contract, Contractor agrees that City may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that City may order the Contractor to stop work, suspend the contract, or terminate the contract.

**3. STANDARD OF CARE.** Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Contractor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Contractor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City may have, Contractor shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Contractor's failure to perform in accordance with this standard of care. Any approval by the City of any products or services furnished or used by Contractor shall not in any way relieve Contractor of the responsibility for professional and technical accuracy and adequacy of its work. City review, approval, or acceptance of, or payment for any of Contractor's work under this contract shall not operate as a waiver of any of the City's rights or causes of action under this contract, and Contractor shall be and remain liable in accordance with the terms of the contract and applicable law.

Contractor shall furnish competent and skilled personnel to perform the work under this contract. The City reserves the right to approve key personnel assigned by Contractor to perform work under this contract. Approved key personnel shall not be taken off of the project by Contractor without the prior written approval of the City, except in the event of termination of employment. Contractor shall, if requested to do so by the City, remove from the job any personnel whom the City determines to be incompetent, dishonest, or uncooperative.

**4. CITY REPRESENTATIVE.** The City may designate a City representative for this contract. If designated, all notices, project materials, requests by Contractor, invoice forms, and progress reports, and any other communication about the contract shall be addressed or be delivered to the City Representative.

**5. CHANGES TO SCOPE OF WORK.** The City may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Contractor's performance under the contract. Contractor shall provide to the City within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Contractor should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Contractor's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Contractor for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Contractor of the change.

When Contractor seeks changes, Contractor shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City to be able to adequately analyze the proposal. The City will then determine in writing if Contractor should proceed with any or all of the proposed change.

Except as provided in this paragraph, Contractor shall implement no change unless the City in writing approves the change. Unless otherwise agreed to in writing, the provisions of this

contract shall apply to all changes. The City may provide verbal approval of a change when the City, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City approval shall not be compensated and is, at the City's election, sufficient reason for contract termination.

**6. CITY COOPERATION.** The City agrees that its personnel will cooperate with Contractor in the performance of its work under this contract and that such personnel will be available to Contractor for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City also agrees to provide Contractor with access to City records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City and Contractor also agree to attend all meetings called by the City or Contractor to discuss the work under the Contract, and that Contractor may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City.

**7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES.** Contractor warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City in writing, and has concluded that the City's resolution of each matter is satisfactory to Contractor. All future questions Contractor may have concerning interpretation or clarification of this contract shall be submitted in writing to the City within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Contractor's question or position. The City representative shall render a decision within 15 calendar days. The City's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Contractor prior to having received the City's resolution shall be at Contractor's risk and expense. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City. Contractor is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

#### **8. TERMINATION OF CONTRACT**

**A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL.** The City, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City chooses to terminate, abandon, or suspend all or part of the project, it shall provide Contractor 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Contractor shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to



the City any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.

4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City to resume performance.

In the event of a termination, abandonment, or suspension at will, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

**B. TERMINATION FOR CAUSE.** This agreement may be terminated by the City on 10 calendar day's written notice to Contractor in the event of a failure by Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner. Contractor shall be given an opportunity for consultation with the City prior to the effective date of the termination. Contractor may terminate the contract on 10 calendar days written notice if, through no fault of Contractor, the City fails to pay Contractor for 30 days after the date of approval of any submitted invoice forms and progress reports.

In the event of a termination for cause, Contractor shall receive all amounts due and not previously paid to Contractor for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City by reasons of Contractor's failure. Contractor shall not be relieved of liability to the City for damages sustained from the failure, and the City may withhold any payment to the Contractor until such time as the exact amount of damages due to the City is determined. All claims for payment by the Contractor must be submitted to the City within 30 days of the effective date of the notice of termination.

If after termination for the failure of Contractor to adhere to all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City, pursue the project or to complete work in a timely and professional manner, it is determined that Contractor had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City shall make an equitable adjustment in the compensation paid to Contractor. The adjustment shall include a reasonable profit for services or other work performed up to the effective date of termination less all previous payments.

**C. GENERAL PROVISIONS FOR TERMINATION.** Upon termination of the contract, the City may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the City shall have the right to solicit applications for employment from any employee of the Contractor assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Contractor's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Contractor's control.

**9. DISPUTE RESOLUTION.** Any dispute not within the scope of section 7 or section 9 shall be resolved under this paragraph. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City Representative and a Contractor representative. At all times, Contractor shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City. If the dispute is not resolved within 30 days, either party may request that the dispute be submitted to the Board of Public Works for final resolution. The decision of the Board of Public Works shall be final and binding on the parties. If either party is dissatisfied with the decision of the Board of Public Works, that party may immediately terminate the contract under this paragraph, with Contractor being entitled to compensation for work actually and satisfactorily performed up to the time of the termination and the City being entitled to all contract materials in accordance with paragraph 21, and compensation for any additional damages or expenses incurred in completing the work under the contract, including, without limitation, the costs of securing the services of other independent contractors.

**10. NO DAMAGES FOR DELAY.** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Contractor for damages because of hindrances or delays in the progress of the work from any cause, and Contractor agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City may provide.

**11. INSURANCE.** Contractor shall carry and maintain in effect during the performance of services under this contract: Professional liability insurance in the amount of \$1,000,000; General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate; \$1,000,000 Combined Single Limit Automobile Liability; and Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000. Contractor shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers and forms of policy satisfactory to the City, acceptance of which shall not be unreasonably withheld. None of the requirements as to types, limits, and approval of insurance coverage to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the contract. The City shall not maintain any insurance on behalf of Contractor. Any subcontractor used is the agent of the contractor and not the City of Nashua's. Subcontractors are subject to the same insurance requirements as the contractor.

Contractor will provide the City with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten (10) calendar days after the City issues the notice of award. The City requires thirty (30) days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. Certificates must name the City of Nashua as an additional insured. Contractor is responsible for filing updated Certificates of Insurance with the City of Nashua's Risk Management Department during the life of the contract.

A. All deductibles and self-insured retentions shall be fully disclosed in the certificates of insurance.

B. If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, the Contractor must maintain umbrella liability insurance of at least

\$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.

C. The specified insurance requirements do not relieve Contractor of its responsibility or limit the amount of its liability to the City or other persons, and Contractor is encouraged to purchase such additional insurance, as it deems necessary.

D. Contractor is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or in part by Contractor or anyone employed, directed, or supervised by Contractor.

**12. INDEMNIFICATION.** Regardless of the coverage provided by any insurance, Contractor agrees to indemnify and shall defend and hold harmless the City, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Contractor's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

**13. FISCAL CONTINGENCY.** All payments under this contract are contingent upon the availability to the City of the necessary funds. This contract shall terminate and the City's obligations under it shall be extinguished at the end of any fiscal year in which the City fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Contractor with a right of payment over any other entity. Any funds obligated by the City under this contract that are not paid to Contractor shall automatically revert to the City's discretionary control upon the completion, termination, or cancellation of the agreement. The City shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor shall have no claim of any sort to the unexpended funds.

**14. COMPENSATION.** Review by the City of Contractor's submitted **monthly invoice forms** and **progress reports** for payment will be promptly accomplished by the City. If there is insufficient information, the City may require Contractor to submit additional information. Unless the City, in its sole discretion, decides otherwise, the City shall pay Contractor in full within 30 days of approval of the submitted monthly invoice forms and progress reports.

**15. COMPLIANCE WITH APPLICABLE LAWS.** Contractor, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Contractor shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

**16. NONDISCRIMINATION.** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Contractor agrees to the following terms. Contractor will

not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Contractor's attention is directed to 41 C.F.R. § 60-1.4, and the clause entitled "Equal Opportunity Clause" which, by reference, is incorporated into this contract, to 41 C.F.R. § 60-250 et seq. and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractor for Disabled Veterans and Veterans of the Vietnam Era," which, by reference, is incorporated in this contract, and to 41 C.F.R. § 60-471 and the clause entitled "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers," which, by this reference, is incorporated in this contract.

Contractor agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and subconsultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Contractor under this contract.

In connection with the performance of work under this contract, Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Contractor agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Contractor shall constitute a material breach of the contract.

**17. FEDERAL SUBCONTRACTING REQUIREMENTS.** If Contractor awards a subcontract under this contract, Contractor, if applicable, shall use the following alternative steps:

- a. Using the services of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, as appropriate; and
- b. Requiring the subcontractor, if it awards subcontracts, to take the affirmative steps set forth in paragraph a-b.

If applicable, Contractor agrees to complete and submit to the City a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within 30 days after the end of each fiscal quarter until the end of the contract.

**18. CONTRACTOR ENDORSEMENT.** Contractor shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Contractor or under its direction as required under the laws of the State of New Hampshire.

**19. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING.** Contractor shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without

the prior written consent of the City. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City is void. Any consent of the City to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

**20. CITY INSPECTION OF CONTRACT MATERIALS.** The books, records, documents and accounting procedures and practices of Contractor related to this contract shall be subject to inspection, examination and audit by the City, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

**21. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the exclusive property of the City and all such materials shall be remitted and delivered, at Contractor's expense, by Contractor to the City upon completion, termination, or cancellation of this contract. Alternatively, if the City provides its written approval to Contractor, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract must be retained by Contractor for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City, in writing, requests any or all of the materials, then Contractor shall promptly remit and deliver the materials, at Contractor's expense, to the City. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the City.

**22. PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS.** Contractor expressly agrees that all documents ever submitted, filed, or deposited with the City by Contractor (including those remitted to the City by Contractor pursuant to paragraph 21), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Contractor in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Contractor. The City shall have the right to reproduce any such materials.

Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Contractor agrees to indemnify, to defend, and to hold harmless the City, its representatives, and employees from any claim or action seeking to impose liability,

costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Contractor infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Contractor infringes any patent.

Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

**23. FINAL ACCEPTANCE.** Upon completion of all work under the contract, Contractor shall notify the City in writing of the date of the completion of the work and request confirmation of the completion from the City. Upon receipt of the notice, the City shall confirm to Contractor in writing that the whole of the work was completed on the date indicated in the notice or provide Contractor with a written list of work not completed. With respect to work listed by the City as incomplete, Contractor shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.

**24. TAXES.** Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Contractor hereby indemnifies and holds harmless the City from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

**25. NON-WAIVER OF TERMS AND CONDITIONS.** None of the terms and conditions of this contract shall be considered waived by the City. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City in a written waiver.

**26. RIGHTS AND REMEDIES.** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

**27. PROHIBITED INTERESTS.** Contractor shall not allow any officer or employee of the City to have any indirect or direct interest in this contract or the proceeds of this contract. Contractor warrants that no officer or employee of the City has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Contractor. If any such interest comes to the attention of Contractor at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City. Contractor also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Contractor further warrants that no person having such an interest shall be employed in the performance of this contract. If City determines that a conflict exists and was not disclosed to the City, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Contractor (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out of or in connection with the

procurement of work to be done or payments to be made under this contract, City may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Contractor shall refund to the City any profits realized under this contract, and Contractor shall be liable to the City for any costs incurred by the City in completing the work described in this contract. At the discretion of the City, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Contractor warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Contractor to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City under this contract or at law.

**28. THIRD PARTY INTERESTS AND LIABILITIES.** The City and Contractor, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party, and this agreement is entered into for the exclusive benefit of the City and Contractor.

**29. SURVIVAL OF RIGHTS AND OBLIGATIONS.** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

**30. SEVERABILITY.** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

**31. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT.** This contract constitutes the entire contract between the City and Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

**32. CHOICE OF LAW AND VENUE.** This contract shall be governed exclusively by the laws of the State of New Hampshire and any litigation shall be brought in a court located in the State of New Hampshire.

## **Exhibit B**

### **Scope of Services**

#### **Stormwater Utility Feasibility Study**

##### **Task A – Stormwater Utility Development Workshops**

CEI will develop workshop agendas and hold a startup workshop, a progress discussion workshop, and a final workshop to present options. The workshop topics will include an overview of current stormwater funding mechanisms and steps for setting up a stormwater utility; existing stormwater program; problems, needs and goals, costs and revenues; and advantages and disadvantages of developing a stormwater utility. We recommend that the attendees include municipal staff, elected officials and influential citizens. CEI attendees will include Eileen Pannetier, Sebastian Amenta and Douglas Gardner. Stephanie Hanson will assist in coordination.

**Deliverables:** Workshop agendas, handouts, and minutes.

##### **Task B – Stormwater Program Analysis and Planning**

CEI will work closely with City staff to analyze what the City of Nashua is currently doing in stormwater management, anticipated new or modified mandates under the new Phase II permit and identification of staffing issues. Based on this analysis, CEI will prepare a master list of the additional stormwater management needs of the City to meet federal mandates and other needs such as correction of flooding and water quality problems.

CEI will prepare an organization chart focused on stormwater activities and programs since stormwater may cross many departments. CEI will prepare a matrix analysis that itemizes by department the tasks, levels of effort and currently budgeted costs and capital expenditures. Once the existing situation has been documented, CEI will add additional desired or mandated activities. Labor rates will be put in as FTEs per year along with operations and maintenance costs and capital expenditures. CEI will also identify options for the legal entity and staffing for the stormwater utility and the associated process for establishment. Nearly all stormwater utilities in the east have been based on Enterprise Funds or fee systems similar to a sewer or water enterprise fund.

**Deliverable:** A memo report documenting the stormwater program analysis.

##### **Task C – Compelling Case**

CEI will analyze issues such as economic impacts, lost recreation opportunities, regulatory compliance, property value impacts, flooding, public health matters including water supply, infrastructure maintenance and general long-term financial impacts to support why additional funds are needed for stormwater. For example, frost heaves and potholes get worse without drainage upkeep. Dredging of water bodies due to deferred





maintenance is expensive. Once the need for more expenditures is unassailably proven, CEI will evaluate which avenue for raising additional funds is the best one for Nashua. This will be performed in conjunction with Task E.

Based on this finding, CEI will develop a compelling case analysis to clearly outline and provide specific support for the advantages and/or disadvantages of adopting a stormwater utility including the pros and cons of the various funding options.

**Deliverables:** Compelling case analysis and recommendations for Nashua.

### **Task D – Education & Outreach Strategies**

CEI will develop a Community Based Marketing (CBM) program to help overcome barriers to utility implementation and promote the importance of good stormwater management.

During the course of Task A – Stormwater Utility Development Workshops, CEI will work with group members to gain an understanding of stormwater public opinion in order to help identify barriers and possible incentives for program buy-in. Issues we typically come across include:

1. Overall stormwater awareness is either lacking or deemed not important.
2. There is often a general understanding of the importance of water quality and clean streams and rivers but a lack of connection between these and other municipal related services such as the effects of clean streets and erosion control.
3. There can be a general lack of awareness of the NPDES Phase II stormwater requirements and funding mechanisms as compared to the importance people place on the benefits obtained from these requirements.

Based on our findings, we will develop a Stormwater Utility Implementation Outreach Plan with detailed information and specific messages and outreach material that Nashua could immediately use to help remove barriers and promote a positive program image.

All materials produced for public distribution shall be reviewed and approved by DES prior to distribution and shall include the DES logo, and the following citation: "Funding for this project was provided in part by a Watershed Assistance grant from the NH Department of Environmental Services with Clean Water Act Section 319 funds from the U.S. Environmental Protection Agency".

**Deliverables:** Stormwater utility implementation outreach plan.

### **Task E – Data Compilation for Rate Methodology**

CEI will identify and assess existing data, data sources, data gaps and potential sources to fill the gaps, for the purpose of laying out a path and estimating costs to support master account file database development. Data will include:

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- Parcel identification
- Land use
- Existing utility database accounts
- Parcel ownership database accounts
- Parcel ownership & address
- Impervious surface coverage

**Deliverables:** A memo outlining the findings and the anticipated level of effort required to compile the data for development of a utility.

### **Task F – Rate Structure Analysis**

CEI will prepare a cost/revenue analysis using a range of proposed, potential utility rates and identify realistic potential rate methodologies, including:

- Impervious area
- Impervious area + gross area
- Gross area/intensity of development/land use
- Base fee and impervious area rate
- Credit allowances
- Others

**Deliverables:** Rate and rate methodology and recommendations.

### **Task G – Billing Methodology**

CEI will work with billing and related planning staff to review and recommend a billing methodology for a possible stormwater utility. The most important issue related to billing methodologies is that it be simple, straightforward and preferably not create redundancy. Most stormwater utility bills or fees are put on either the tax base as a fee or with an existing sewer or water bill.

CEI will consider the billing frequency, billing database source, billing recipient (e.g., owner or tenant), long term database management, procedure for handling delinquencies and appeals process in reviewing and recommending a billing methodology.

**Deliverables:** Billing summary and methodology recommendations.

### **Task H – Recommendations**

CEI will use the matrix analysis developed under Task B as the basis for existing O&M and capital expenditures. CEI will work with City staff to add and arrange new recommendations for stormwater management to this matrix. From this, CEI will prepare a draft of the recommendations for distribution to the City and to NH DES, which includes impacts on existing staff and recommended changes to structure to manage the stormwater requirements within the utility framework.

**Deliverables:** Included in Task I deliverable.



**Task I – Final Feasibility Study Report**

CEI will prepare a draft and final report to incorporate the City's and NH DES' comments. Since CEI has worked with the City and with NH DES on frequent occasions previously, we are already familiar with many of the staff and will work closely to make sure issues and comments are addressed early and thoroughly.

**Deliverables:** Final Feasibility Study Report and Plan.

**Task J – Presentation and Final Recommendations**

CEI will prepare a presentation for the Board of Public Works and the Board of Alderman either separately or in a special meeting jointly. CEI will also prepare a Q&A sheet that will contain the questions that have come up during the workshops and otherwise, along with questions we've seen asked elsewhere. These steps together will help to make a smooth process where everyone has had an opportunity to get questions answered.

**Deliverables:** Presentation of Feasibility Study Report to Board of Public Works and Board of Aldermen and Q&A.



## **Exhibit C**

### **Contract Time**

CEI will complete the project within six months from the Notice to Proceed from the City.

CEI will submit a draft Feasibility Study Report within five months from the Notice to Proceed.  
CEI will submit the Final Report within two weeks of receiving review comments on the draft Feasibility Study Report from the City and NHDES.

# Nashua Stormwater Utility Feasibility Study

Hours